

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 201 of 1988

with

FIRST APPEAL No 202 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

and

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

2ND ADDL. SPL.LAND ACQUISITIONOFFICER

Versus

MOHANBHAI PRABHUDAS PATEL SINCE DECD.THRU HIS HEIRS & L.R.

Appearance:

Mr. H.C. Patel, AGP for Petitioner No. 1

MR AJ Patel for Mr. A.B. Munshi for Respondent No. 1

RULE SERVED for Respondent No. 1/1

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE H.K.RATHOD

Date of decision: 17/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. H.C. Patel for the appellants and Mr. A.J. Patel for Mr. A.B. Munshi for the respondents original claimants. By way of this appeal, the appellant State of Gujarat has challenged the award made by the Reference Court Ahmedabad Rural in Land Acquisition Case No. 26 of 1987 and 27 of 1987 dated 13th April, 1987 wherein the reference court has allowed the said two references and it was ordered that the claimants do recover an amount of Rs. 8.50 ps. as additional compensation per square meters of the acquired lands with the solatium at the rate of 30 per cent. The claimants were also held to be entitled to recover interest at the rate of 9 per cent per annum upto one year after the possession of the acquired lands is taken and if the amount is not deposited within one year, the claimants were also held to be entitled to recover the interest at the rate of 15 per cent per annum after that period till the amount is deposited. As per the said award, the claimants were also held to be entitled to additional claim of 12 % p.a. on the total amount of compensation under the provisions of sub section (1A) of section 23 of the Act at the rate of 12 per cent per annum from the date of notification under section 4 of the Act i.e. from 21.6.1983 till the date of taking over possession of the acquired lands by the Government i.e. 16.1.1986 with proportionate costs on the awarded amount of compensation.

The facts of the present appeals are to the effect that according to the case of the claimants, the compensation awarded to them by the land acquisition officer is very low and meagre; the reasonable compensation per square meters of the acquired land is the amount of Rs.15.00 per sq. mtr.; their land is very fertile and they are deriving the net annual income of Rs.4,000.00 per vigha of the acquired lands; the village Koth where these lands are situated is fast developing village and there are all the facilities and amenities of life; the land has potential value for building purpose and at the same time, the price of money is continuously decreasing and, therefore, it was prayed by them before the reference court for awarding compensation at the rate of Rs.15.00 per sq. mtr. for the acquisition of their lands.

On the basis of the claim made by the claimants, the reference court framed common issues in both the said compensation cases at Exh. 8 as under:

- (1) Whether the compensation by the special land acquisition officer is not fair and adequate ?
- (2) If yes, what additional compensation the claimants are entitled to?
- (3) What order?

Before the reference court, on behalf of the claimants, one Mohanbhai Prabhudas was examined at Exh. 12 who was the claimant in Claim Case No. 27 of 1987. No evidence was led by the original opponents before the tribunal. Except that, no other oral evidence was led by the claimants before the tribunal. The reference court after hearing the arguments advanced by the advocates before it and also after considering the evidence on record, made the aforesaid award by answering issue No. 1 and 2 in the affirmative. As per the deposition of the witness Mohanbhai Prabhudas who was examined at Exh.12 before the reference court, their lands were acquired by the Government for the construction of Electric Sub Station No. 66 KV; the land of both these cases are situated adjoining each other, and are of the same quality and fertility and both these lands are of Zirayat type; that the notification under section 4 of the Land Acquisition Act was published on 21.6.1983 and the notification under section 6 of the said Act was published on 18.10.1985; that the land acquisition officer has passed his award on 17.3.1986 and has awarded compensation at the rate of Rs.3.50 ps. per square meter of the acquired lands and as the amount was very low and meagre and, thereafter the claimants filed the said references before the reference court and claimed the amount of Rs.15.00 per square meters.. He has also deposed that the population of village Koth is eight thousand to nine thousand and there are about 150 shops and two dispensaries and two banks. There is a market yard and cotton jins; there is a railway in their village; there is also a facility of ST Buses. According to the said witness, Dholka town is at a distance of about 8 kms from their village; there are primary schools and technical institutions situated in their village. He has also deposed that before acquisition, the claimants were cultivating the acquired lands and were deriving two to three crops during the entire year; that during the monsoon season, they were cultivating cotton and during the monsoon, they were cultivating cotton and during the summer, they were cultivating Juwar. According to him, if they cultivate in winter, they were taking crop of

cotton or the crop of tuver or Kathod. According to the said witness, during the monsoon, they were deriving cotton crop to the tune of 40 to 50 mounds per vigha of the acquired lands. According to him, at that time, the price of cotton per mounds was Rs.60.00 to Rs.70.00 only; during the summer, they were deriving Juwar crop to the tune of 10 mounds per vigha of the acquired lands and the price of Juwar per mound was Rs.20.00 to Rs.25.00 only; they were getting about 500 to 700 bundles of the grass of Juwar. According to him, at that time, the price of 100 bundles of the grass of Juwar was Rs.30.00 to Rs.35.00. He has thereafter stated in his deposition that if they cultivate Tuver they will derive 20 to 25 mounds of Tuver crop and the price of Tuver per mound was Rs.75.00. If they cultivate cotton during the winter, they derive about 20 to 25 mounds crop of cotton per vigha of the acquired lands. According to him, their lands were irrigated; there was a tubewell of one Bhikhabhai adjoining the acquired lands; they were taking water from that tube well for irrigation purpose; that they have incurred expenses of 1/3rd amount of their agricultural income. According to him, the net annual agricultural income per vigha of the acquired land was Rs.3000/- to Rs.3500.00 only; these lands are situated adjoining the road and are at a distance of only about two to three fields from Koth village. According to this witness, village Bagva is at the distance of about 2 miles from their village. This witness produced copy of the judgment of the District Court at Narol with regard to the lands acquired at Dagva village at Exh.13 and thereafter, he has deposed that the Government has acquired the lands at Bagodara village for the construction of ST Bus Stop; the District Court at Narol has awarded the amount of compensation at the rate of Rs.7.00 per sq. mtrs. of the lands acquired at village Bagodara. He has also produced the copy of the judgment of the District Court at Narol at Exh.16 with regard to the lands acquired at Bagodara village. He has stated in his deposition that when the possession was taken on 16.1.1986, there was standing crop of Tuver and the price of that crop was at Rs.4800.00 and the panchanama was also drawn to that effect but the land acquisition officer has not awarded any compensation as regards standing crop. He has, however, stated in his deposition that he has taken away standing crop and there was Tuver crop in that standing crop to the tune of 50 to 60 mounds. Thereafter, the reference court observed that now it is to be noted that he has quoted the price of Tuver per mound at Rs.75.00; that if he had taken away about 60 mounds of Tuver, the amount would be about Rs.4500.00. In view of these circumstances, it was

observed by the reference court that he is not entitled to any amount of compensation regarding standing crop of Tuber. Thereafter, the witness has stated in his deposition at Exh.12 that their demand of Rs.15.00 per sq. mtr. of the acquired land is quite reasonable.

In his cross examination, this witness has deposed that he has no documentary evidence to show his agricultural income to show that they are cultivating three crops during the year. He has also stated in his cross examination that if there are good rains they will derive very good crops. He has, thereafter, denied the suggestion that the land acquisition officer has awarded reasonable and fair compensation to them. The reference court has observed that merely because there is no documentary evidence produced by the claimants as regards their agricultural income, it cannot be said that the evidence of the claimants is unreliable and has further noted that the claimants are villagers and, therefore, they are presumed to be illiterate persons and it would not be possible for them to maintain written accounts for their agricultural income and expenses and, therefore, on that ground, the evidence of this witness cannot be disbelieved. At the same time, it has also been observed by the reference court that the likelihood of the exaggeration in the say of the claimant regarding crop income cannot be ruled out for the simple reason the claimants are coming before the court for getting the enhanced rate of compensation; however, merely because of the possibility of exaggeration, the evidence of the claimant cannot be totally disbelieved but the court has to appreciate the evidence and has to remove the possibility of any exaggeration, if any, in the deposition of the witness and thereafter, the court can rely on the deposition of the claimant as regards the crop income.

Before the reference court, the appellant has not led any oral or documentary evidence. On the contrary, the claimants have produced before the reference court two decisions vide Exh. 13 and 16 in respect of the lands at village Bagodara and Degva. In respect of the judgment of the District Court at Narol relating to village Degva, notification under section 4 of the Land Acquisition Act was published on 27th June, 1974 wherein the reference court granted compensation of Rs.5.00 per square meter and in respect of the judgment of the reference court in relation to village Bagodara, notification under section 4 of the Land Acquisition Act was published on 1st October, 1981 wherein the reference court has granted compensation of Rs.7.00 per square

meters and thus these two documents were produced in support of their demand with oral evidence of the witness Mohanbhai Prabhudas at Exh.12 but as against that, the appellant has not led any oral evidence and has also not produced any documentary evidence. In view of these facts, the reference court has examined the merits of the matter.

On the basis of the aforesaid oral evidence at Exh. 12 and the documentary evidence at Exh. 13 and 16, the reference court has observed that merely because there is no documentary evidence produced by the claimants as regards their agricultural income, it cannot be said that the evidence of the claimants is unreliable and has further noted that the claimants are villagers and, therefore, they are presumed to be illiterate persons and it would not be possible for them to maintain written accounts for their agricultural income and expenses and, therefore, on that ground, the evidence of this witness cannot be disbelieved. At the same time, it has also been observed by the reference court that the likelihood of the exaggeration in the say of the claimant regarding crop income cannot be ruled out for the simple respondent the claimants are coming before the court for getting the enhanced rate of compensation; however, merely because of the possibility of exaggeration, the evidence of the claimant cannot be totally disbelieved but the court has to appreciate the evidence and has to remove the possibility of any exaggeration, if any, in the deposition of the witness and thereafter, the court can rely on the deposition of the claimant as regards the crop income.

In para 9 of the award, it has been observed by the reference court that the fair and reasonable compensation can be ascertained from the sale instance of the lands situated nearby the acquired lands. If that is not available, then, the evidence of an expert is to be resorted to in order to ascertain the fair and reasonable compensation. If that evidence is also not available, then the Court has to consider the crop income of the claimants in order to ascertain the fair and reasonable compensation. There was no evidence produced by the present appellant before the reference court. As regards the award made by the special land acquisition officer, it has been observed by the reference court that the same cannot be read in evidence, according to law. The claimant has also not produced any sale instance regarding any lands situated in the vicinity of the acquired land. There was also no suggestion to that effect made by the present appellant in the cross

examination of the said witness for the claimants at Exh.12. In view of these facts, the reference court has ascertained the amount of compensation being just, fair and reasonable on the basis of the crop income of the claimants. The reference court has also observed that the Land Acquisition Officer has, before awarding the compensation, not taken into account the crop income of the claimants as well as the potential value of the acquired land for building purpose. Keeping in view all the aspects as aforesaid, the reference court has examined the oral evidence of the witness Mohanbhai Prabhudas at Exh. 12. After examining the oral evidence of the witness at Exh.12, the reference court has come to the conclusion that capitalize the annual income, it can be said without any hesitation that the claimants are entitled to the amount of Rs.11.40 ps. per square meter of the acquired lands as compensation. The reference court has also observed that it is to be noted that if the claimants will invest this amount in any nationalized bank or in any other Government securities in Fixed Deposit, they will derive the net annual income of Rs.1.40 by way of interest and under these circumstances, the reference court was of the view that the claimants should be entitled to the amount of Rs.11.40 ps. per sq. mt. of the acquired lands considering the crop income of the claimants. The reference court has also considered the decision of the apex court in case of State of West Bengal versus Shyam Pala reported in AIR 1975 SC 1723 and has come to the conclusion that the ratio of the said decision will not apply to the facts of the case before the reference court. The reference court has also observed that in compulsory acquisition, the seller is ordinarily not getting the price which a free seller gets from the free buyer in open market. The reference court has also observed that the fair and reasonable compensation must be such that it should not appear to be an illusory one or an alms to a beggar but the compensation must be adequate, fair and reasonable. The reference court has also observed that there is nothing on record to show that the special land acquisition officer has considered the crop income of the claimants or has considered the other advantages attached to the acquired lands and under the circumstances, the reference court has observed that the award of the special land acquisition awarding the abovestated amount is absolutely low and meagre.

In para 13 of the award, the reference court has considered two decisions produced by the claimants before it at Exh.13 and 16 and in light of the notification under section 4 of the Land Acquisition Act, published in

both the said cases, the reference court has considered the demand of Rs.15.00 per square meter in respect of the acquired lands and has also considered that the land is situated at the distance of 3 to 4 field from village Koth which is very big and prospective village and the acquired lands are situated adjoining the road and, therefore, it can be said that the acquired lands have also potential value for the building purpose and therefore, the reference court has awarded additional compensation of Rs. 00.60 ps. per square meter so far as the building potentiality of the acquired lands is concerned and has awarded total compensation of Rs.12.00 per sq. mtr. in favour of the claimants as reasonable, just and fair compensation in the facts and circumstances of the case and, thereafter, the reference court has considered the question of solatium ; 12 per cent increase in the market price and 9 per cent interest which has been awarded by the reference court in favour of the claimants.

During the course of hearing, learned AGP Mr. H.C. Patel appearing for the appellant has submitted that though there was oral evidence of the claimant Mohanbhai Prabhudas at Exh. 12, but there was nothing on record as regards crop income and yet, in absence of any documentary evidence as regards crop income, the reference court has committed error in considering the oral evidence of the witness for considering crop income and has also committed an error in granting compensation in that regard. Except the oral evidence, there was no other evidence and, therefore, the reference court has committed error in granting additional compensation. Except that, no other submissions were made by the learned AGP Mr.H.C. Patel on behalf of the appellant.

On the other hand, learned counsel Mr.A.J. Patel appearing for Mr. Munshi for the respondents original claimants has submitted that the reference court was right in appreciating the oral evidence of the witness Mohanbhai Prabhudas at Exh. 12 because illiterate and farmers may not be having exact documentary evidence in support of their agricultural income and, therefore, the reference court has not committed any error in considering the oral evidence of the witness at Exh. 12. He has also submitted that the reference court has also considered merits of each and every aspects and has kept in mind relevant factors for ascertaining the crop income. He has also submitted that since there was no evidence on record from the side of the appellant that the special land acquisition officer has considered crop income while awarding compensation for the acquired

lands, the reference court was justified in appreciating the oral evidence of the witness at Exh. 12 for awarding compensation for crop income. Thus, according to his submission, there is no error committed by the reference court, the reasons given and the conclusions drawn by the reference court are cogent and convincing and the award made by the reference court is quite just, reasonable and proper and, therefore, there is no need to interfere with such just, reasonable and fair award.

We have considered the submissions made by the learned advocates for the parties. We have also gone through the original record and proceedings as well as the award made by the reference court and the award made by the Special Land Acquisition Officer. Entire award of the reference court was read over before this court by the learned AGP Mr.H.C. Patel but he has not been able to point out any infirmity and/or perversity in the award made by the reference court. His sole contention is that there was no satisfactory evidence produced by the claimants as regards crop income from the acquired lands and, therefore, reference court ought not to have relied upon the oral evidence of the witness at Exh. 12 in absence of any documentary evidence as regards crop income. According to our opinion, this aspect has been examined by the reference court while appreciating the oral evidence of the witness at Exh. 12 for the claimants and has observed that merely because there is no documentary evidence produced by the claimants as regards their agricultural income, it cannot be said that the evidence of the claimants is unreliable and has further noted that the claimants are villagers and, therefore, they are presumed to be illiterate persons and it would not be possible for them to maintain written accounts for their agricultural income and expenses and, therefore, on that ground, the evidence of this witness cannot be disbelieved. At the same time, it has also been observed by the reference court that the likelihood of the exaggeration in the say of the claimant regarding crop income cannot be ruled out for the simple reason the claimants are coming before the court for getting the enhanced rate of compensation; however, merely because of the possibility of exaggeration, the evidence of the claimant cannot be totally disbelieved but the court has to appreciate the evidence and has to remove the possibility of any exaggeration, if any, in the deposition of the witness and thereafter, the court can rely on the deposition of the claimant as regards the crop income. Thus, we are of the view that while appreciating the oral evidence of the witness at Exh. 12, the reference court has taken sufficient care and

caution and after analyzing the total income per year, the reference court has considered that the compensation of Rs.11.40 ps. per square meter would be just compensation and Rs.00.60 ps. per square meter for the building potentiality and has granted compensation of Rs.12.00 per square meter and, therefore, after considering the observations and the analysis made by the reference court in view of the oral and documentary evidence before it, according to our opinion, the reference court has not committed any error in awarding total compensation of Rs.12.00 per square meter. The reference court has, after deducting the compensation already granted by the special land acquisition officer of Rs.3.50 per square meter, awarded additional compensation of Rs. 8.50 per square meter with 30 per cent solatium and 9 per cent interest upto one year and after possession of the acquired land is taken and if the amount is not deposited within one year, the claimants are entitled to recover interest at the rate of 15 per cent after that period till the amount is deposited. Reference court has also granted 12 per cent increase on the market price to the claimants under section 23-1-A of the Land Acquisition Act.

It is also necessary to note one aspect that as per the oral evidence of the witness Mohanbhai Prabhudas at Exh. 12, at the time when the possession of the land in question was taken over from the claimants, there was a standing crop on the lands under acquisition valued at Rs.4,800.00 as mentioned in the panchanama drawn by the concerned officer in respect of which no compensation was awarded by the land acquisition officer while granting compensation for the land. Since the compensation was not granted for such standing crop, the crop standing in the land was taken away by the claimants. In view of this evidence on record, it has been sufficiently established before the reference court that the acquired lands were fertile lands and were not barren lands. For contending that the reference court ought not to have awarded compensation for crop income, the appellant is required to prove that the lands were barren but from this evidence on record, it would appear that the lands were fertile and, therefore, the reference court was justified in granting additional compensation under the impugned award. We are, therefore, in total agreement with the conclusions drawn and the reasons given by the reference court.

In view of these facts and considering the decision of the apex court in case of Sundar versus Union of India reported in 2001 (3) GLH 446, the claimants are

entitled to have interest upon the total amount of compensation including the solatium and other statutory benefits available under the provisions of the Land Acquisition Act.

In view of the above, there is no substance in this appeal and the same is required to be dismissed. Accordingly, this appeal is dismissed with costs. Ad.interim relief, if any, shall stand vacated forthwith.

While admitting this appeal, in civil application no. 440 of 1988, this court has issued rule and ad.interim relief was also granted on a condition to deposit the entire awarded amount within eight weeks from the date of the order 26th February, 1988 in the trial court and the claimants were permitted to withdraw 1/3rd thereof without furnishing security and the remaining 2/3rd was ordered to be invested in the long term fixed deposit so as to last at least during the pendency of the appeal.

In view of these orders passed by this Court in aforesaid civil application, and since this court has now dismissed the first appeals, the trial court is now directed to disburse the said amount invested in the long term fixed deposit to the claimants by account payee cheque drawn in the name of the original claimants.

Registry of this court is directed to sent the records and proceedings of this matter to the trial court immediately.

17.10.2002. (Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

Vyas